

REMARKS

Claims 22-33, 50 and 53-58 are pending in the application. Claims 24, 26, 27, 29, and 55-58 have been withdrawn from consideration. In the Office Action dated July 13, 2005, the Examiner rejected claims 1, 2, 7, 8, 19, 21, 34-38, 39, 48, 50, 53 and 54 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,793,326 to Shishido in view of U.S. Patent No. 5,337,734 to Saab. The Examiner also rejected claims 1, 2, 7, 8, 19, 21, 34-38, 39, 48, 50, 53 and 54 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,301,061 to Nakada et al. in view of U.S. Patent No. 5,337,734 to Saab. The Examiner additionally rejected claims 1, 2, 19-21, 34, 35 and 48-50 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,699,178 to Koda in view of U.S. Patent No. 5,337,734 to Saab. The Examiner rejected claims 10, 12, 13, 16-18, 41-43, 46 and 47 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,793,326 to Shishido in view of U.S. Patent No. 5,337,734 to Saab as applied to claims 1 and 34, and further in view of U.S. Patent No. 6,551,278 to Geitz and U.S. Patent No. 5,899,850 to Ouchi. The Examiner also rejected claims 22, 23, 25, 28, 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,793,326 to Shishido in view of U.S. Patent No. 5,337,734 to Saab and further in view of U.S. Patent No. 6,551,278 to Geitz and further in view of U.S. Patent No. 5,899,850 to Ouchi. In addition, the Examiner rejected claims 12-15, 41 and 43-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,793,326 to Shishido in view of U.S. Patent No. 5,337,734 to Saab as applied to claims 1 and 34, and in view of U.S. Patent No. 5,603,699 to Shine.

Applicants wish to thank Examiner Foreman for his time and courtesy in conducting a telephone interview with the undersigned attorney on January 12, 2006. During the interview, applicants' attorney explained how the claims in the application patentably distinguished over the cited references. In particular, the applicants' attorney pointed out that the Shishido patent did not disclose a device that could be considered a collection device attached to a sheath or other structure that encapsulated the working end of an insertion tube insofar as, as shown in Figure 6, the Shishido endcap has an open distal end that would expose an endoscope insertion tube to contamination. Applicants' attorney further pointed out that the endoscope disclosed in the Nakada *et al.* patent projected through the end of a reinforcing sheath except for the embodiment shown in Figure 23. However, in this embodiment, there is no structure projecting from the end of the sheath that could arguably be considered a collection device.

Similarly, it was argued that the device disclosed in the Koda patent did not include a sheath encapsulating an endoscope insertion tube and having a collection device projecting from the distal end of a sheath. Finally, applicants' attorney admitted that the Saab patent did disclose a sheath encapsulating the working end of an insertion tube, but pointed out the patent did not disclose a collection device attached to the distal end of the sheath or any other means of taking a biopsy sample. Applicants' attorney also argued that the Saab patent in combination with any of the other above-discussed patents did not suggest a sheath encapsulating the working end of an endoscope and having a collection device project projecting from its distal end.

Despite these arguments, the Examiner was not convinced that independent claims 1, 34 or 50 patentably distinguished over the cited references. However, after discussing the lack of any teaching in the Geitz or Ouchi patents of a movable cover at least partially enclosing the collection member attached to the sheath, the Examiner did agree that claim 22 patentably distinguished over the cited references. The Examiner also agreed that claim 50 would patentably distinguish over the cited references if amended to recite that the claimed biopsy sampling device was at least partially enclosed by a cover member that was actuated when the insertion tube was inserted into the body to at least partially expose the biopsy sampling device. In view of this agreement with respect to claims 22 and 50, applicants agreed to cancel the remaining independent claims, *i.e.* claims 1 and 34, as well as the claims dependent thereon, although applicants still believe that such claims are patentable.

All of the claims remaining in the application, namely claims 22-33, 50, 53 and 54, are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

DORSEY & WHITNEY LLP

A handwritten signature in black ink, reading "Edward W. Bulchis". The signature is written in a cursive style with a large, stylized "E" and "B".

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